

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 NEIL O. SELJESTAD,

8 Plaintiff,

9 v.

10 MICHAEL J. ASTRUE, Commissioner of the
Social Security Administration,

11 Defendant.

Case No. C10-5859-RSM

**ORDER ADOPTING REPORT
AND RECOMMENDATION AND
REMANDING CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

12 The Court, after careful consideration of the Plaintiff's complaint, the Parties' briefs, the
13 Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate
14 Judge, Defendant's Objections to the Report and Recommendation, Plaintiff's Response to the
15 Objections and the balance of the record, does hereby find and **ORDER:**

16 (1) Defendant primarily requests clarification as to whether the recommendation of
17 the Magistrate Judge to reverse the Commissioner's decision and remand for
18 further proceedings is pursuant to sentence six or sentence four of 42 U.S.C. §
19 405(g). Defendant correctly argues that a case may only be reversed pursuant to
20 sentence four and not sentence six of the statute. To clarify, remand in this case is
21 pursuant to sentence four.

22 (2) Defendant additionally requests that the Court delete the Magistrate judge's
23 instruction on remand that the ALJ further develop the record as to new evidence

1 and a subsequent grant of benefits to plaintiff and consider whether this favorable
2 decision alters the ALJ's initial, negative decision. The Court declines to do so.
3 Contrary to Defendant's argument, inclusion of this instruction does not transform
4 the remand into a sentence six or a sentence six/four hybrid remand. A reviewing
5 court may remand a case pursuant to sentence four in order to further develop the
6 record and consider evidence that was not considered by the ALJ. Especially
7 where, as in this case, that evidence was specifically referenced by the Appeals
8 Council in its review of the initial decision.

9 (3) The Court adopts the Report and Recommendation.

10 (4) The Commissioner's decision is **REVERSED** and the case is **REMANDED**,
11 pursuant to sentence four of 42 U.S.C. § 405(g), to the Social Security
12 Administration for further proceedings consistent with the Report and
13 Recommendation.

14 (5) The Clerk is directed to send copies of this Order to the parties and to Judge
15 Tsuchida.

16 DATED this 6th day of April 2012.

17
18
19 

20 RICARDO S. MARTINEZ
21 UNITED STATES DISTRICT JUDGE
22
23